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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~6356~~ 70-5058

NORMA TORO, on behalf of herself and all other persons similarly situated,

Appellant,

v.

EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, Commissioner of the Superior Court of the State of Connecticut; CHARLES H. BARRETT, Deputy Sheriff of New Haven County, individually and as representative of all Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut; and THE HAMDEN NATIONAL BANK,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

MOTION TO AFFIRM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

For Appellee,
Charles H. Barrett,
Deputy Sheriff

ROBERT K. KILLIAN,
Attorney General

RAYMOND J. CANNON,
Assistant Attorney General.

MOTION TO AFFIRM

The appellee in this case moves to affirm the Judgment of the United States District Court for the District of Connecticut on the ground that it is manifest that the questions on which the decision depends are so unsubstantial as not to need further argument.

Dated January 27, 1971.

Respectfully submitted,

Appellee,
Charles H. Barrett,
Deputy Sheriff

By: ROBERT K. KILLIAN,
Attorney General

RAYMOND J. CANNON,
Assistant Attorney General.

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No. 6356

NORMA TORO, on behalf of herself and all other persons similarly situated,

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EUGENE A. CAMPOSANO; JEROME A. LACOBELLE, Commissioner of the Superior Court of the State of Connecticut; CHARLES H. BARRETT, Deputy Sheriff of New Haven County, individually and as representative of all Sheriffs, Deputy Sheriffs and Constables of the State of Connecticut; and THE HAMDEN NATIONAL BANK,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF APPELLEE RE MOTION TO AFFIRM

For Appellee,
Charles H. Barrett,
Deputy Sheriff

ROBERT K. KILLIAN,
Attorney General

RAYMOND J. CANNON,
Assistant Attorney General.

JURISDICTION

The present action is brought under the Civil Rights Acts, 42 U. S. C. § 1983 and 28 U. S. C . § 1343. The appellee claims that the judgment dismissing this action should be affirmed because the complaint is fatally deficient on the following grounds:

1. The right asserted is not one of personal liberty but one of property, and thus falls outside of the scope of § 1343.

2. The complaint seeks to stay a pending state court proceeding, namely, the garnishment of a bank account pursuant to a writ issued by a Commissioner of the Superior Court.

STATEMENT OF THE CASE

In Connecticut garnishment process is served on garnishee and defendant by a sheriff pursuant to directions contained in the writ of summons issued by the plaintiff's attorney as Commissioner of the Superior Court. *See* Conn. Gen. Stat. (Rev. to 1968, Supp. 1969) §§ 52-89, 52-329, 52-337. Security for subsequent judgment is thus provided. Various property, however, is exempt from garnishment, including household furniture and articles of a debtor's trade. Conn. Gen. Stat. (Rev. to 1968) §§ 52-329, 52-352. As early as 1937, wage garnishment prior to judgment was abolished. Conn. Gen. Stat. (Rev. to 1968, Supp. 1969), § 52-361. Even as to post-garnishment of wages, strict limitations were enacted in a 1969 amendment. *See id.*

Any defendant whose property has been garnisheed may apply to a judge to cite the plaintiff to appear and state under oath the amount of the claim and whether he truly believes it to be just. The judge may require a bill of particulars to be furnished by the plaintiffs. Conn. Gen. Stat. (Rev. to

1968), § 52-301. Excessive attachments may be ordered to be discharged. Conn. Gen. Stat. (Rev. to 1968), § 52-302. Wrongful or unauthorized attachment, moreover, is subject to an action for abuse of process or conversion. *See Csakany* v. *Takacs*, 143 Conn. 485, 487, 123 A. 2d 764 (1956); *Flaxman* v. *Capitol City Press, Inc.*, 121 Conn. 423, 429, 185 Atl. 417 (1936).

The indigency of Mrs. Toro, appellant, is not established by either the complaint or supporting affidavits. It is claimed in the jurisdictional statement that she earns $85.00 weekly with "a small supplemental grant" from Connecticut's AFDC Program. (p. 6). Appellant sheds no light on the amount of that welfare grant. As a matter of fact in an affidavit, Doc. 17, it is stated that she had been employed for the past two years. (¶5). She further stated that she had been trained for a supervisory position with her present employer, Gant Shirtmakers of New Haven, Conn. (¶¶6, 7), and alleged:

> "Because her employment has worked out so well, she believes that it should not be long before she is able to become completely self-sustaining and no longer be dependent on aid from State Welfare." (¶9).

We further note that there is a serious question as to whether the appellant is eligible for welfare in the first place even on her $85.00 salary. The maximum earned income for welfare recipients is $266.67 per month for a family of two. Conn. Gen. Stat. (Rev. to 1968, Supp. 1969) § 17-2. According to Mrs. Toro's allegations, she earns about $340.00 per month. See also her affidavit in Doc. 4, ¶2. This greatly exceeds the $250.00 aid limitation for large families of the State of Maryland which this Court sustained in *Dandridge* v. *Williams et al.* (No. 131 October Term, 1969).

Mrs. Toro opened her checking account in October, 1969, and in the three to four months before it was garnisheed ac-

cumulated over one hundred dollars in the account. (Complaint, §§ 9, 15).

It is interesting that no mention whatsoever of income or aid is made in the forma pauperis affidavit before this Court.

In her Jurisdictional Statement, appellant claims that she and her landlord had agreed to terminate the lease without liability to the tenant. However, in the appellant's affidavit of March 16, 1970, she stated that she had "stopped payment" on her January rent payment and allowed her landlord to keep her security deposit in the amount of one month's rent for her occupancy of the premises during January, 1970. (§ 12). This also indicates that Mrs. Toro's dishonored checks can not be blamed solely on the garnishment of her checking account as she claims.

In summary, the record indicates that Mrs. Toro's current earning power was not affected in any way whatsoever by the garnishment. The assumption that the garnisheed funds were necessary for "subsistence" is totally unsupported in the record and offers of proof.

NO SUBSTANTIAL FEDERAL QUESTION PRESENTED.

A. Essentially only a property right is involved.

The basis for the dismissal of the complaint is more than adequately set forth in the Memorandum of the Three-Judge Court. Basically, the Court held that uninterrupted use of a bank account concerned almost entirely the use of money. The right asserted in substance did not involve personal liberty but only that of property. The complaint thus fell outside the scope of 28 U. S. C. § 1343 (3). The jurisdictional amount required by 28 U. S. C. §1331 (a) was not alleged to have been met.

Where only property rights are involved, § 1331 (a) would be rendered virtually meaningless if its requisite jurisdictional amount could be evaded by coloring the complaint as a Civil Rights one with purported jurisdiction under § 1343. This apparent jurisdictional conflict was resolved by Mr. Justice Stone, concurring in *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496 at 518 ff. (1939), as follows: Civil Rights jurisdiction would lie only where the right involved was "one of personal liberty, not dependent for its existence upon the infringement of property rights. . . ." 307 U.S. at 531. The right asserted had to be inherently incapable of pecuniary valuation to come under § 1343.

This opinion was recently followed in *Eisen* v. *Eastman*, 421 F. 2d 560 (2d Cir. 1969), involving a landlord's challenge to rent control. The Court stated that notwithstanding certain arguments against Justice Stone's analysis,

> "There seems to be something right about it, especially if one accepts, as we do, his premise that the overlap between 28 U. S. C. § 1331 and 28 U. S. C. § 1343 (3) should be explained in some rational way."
> 421 F. 2d at 565.

Applying these principles to our situation, we note that a deposit in an ordinary commercial bank creates the relationship of debtor and creditor between the bank and the depositor. *State* v. *Vars*, 154 Conn. 255, 262, 244 A. 2d 754 (1966). When a checking account is garnisheed it is only the defendant's interest as a bank creditor which is affected. Current earning power of the defendant remains wholly unimpaired, unlike the situation in *Sniadach*, 395 U.S. 337 (1969). Accordingly, there is no authority for jurisdiction under cases such as *King* v. *Smith*, 392 U.S. 309, 334 (1968) ("destitute children . . . flatly denied assistance" with attending social ills).

See also McCall v. *Shapiro*, 416 F. 2d 246 (2d. Cir. 1969); *Weddle* v. *Director*, 39 U.S. L. W. 2370 (4th Cir. 1970); *Johnson* v. *Harder*, 318 F. Supp. 1274 (D. Conn. 1970); *Campagnolo* v. *Harder*, Civ. No. 13, 968 (D. Conn. 1970), appendix F; *Hingle* v. *Perez*, 312 F. Supp. 127 (E.D. La. 1970).

The jurisdictional statement contains a mass of citations (pp. 9, 15 and 16) which involve situations very different from this one. *Santiago* concerned a landlord's sale of distrained household furnishings of the tenant, exempt in Connecticut. *Swarb* concerned confession judgments and relief was denied in that case. *Moya* involved post-judgment wage garnishment and there also relief was denied. *Gold* concerned the liberty to pursue one's calling. *Taylor* concerned the right to public employment. These are fully in line with *Eisen*.

Appellant claims that she lacks a state forum in which to bring her suit because of court costs. However, there are no court costs involved in raising the unconstitutionality of garnishment as a defense. Appellant also cites *Michael's Jewelers* (266 A. 2d 904) supposedly to show that Connecticut courts will not listen to constitutional claims. That case specifically dealt in detail with the due process claim. We further note that counsel for the defendant in *Michael's Jewelers* was employed by the same legal services program which has brought the present suit. The records of the Circuit Court indicate that no petition for certification to the Connecticut Supreme Court or for that matter certiorari to the U.S. Supreme Court was ever sought in that case.

It is recognized that the analysis in *Hague* and *Eisen* is not one of mathematical nicety. Few rules are. But it does furnish a meaningful and understandable test in determining which rights truly merit Civil Rights jurisdiction. In a time when the federal courts are being inundated with claims col-

ored under the color of law statutes, the sound principles set forth by the three-judge district court should be affirmed without need for further argument. The federal courts are now delineating the limits of the personal liberty-property right distinction. Clear guidelines in this respect are provided by the court below and should be affirmed without need for further discussion.

B. Anti-injunction Act also bars relief.

Title 28 U. S. C. § 2283 provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

This provision reflects fundamental principles of federalism. *Atlantic Coast Line Railroad Co.* v. *Brotherhood of Locomotive Engineers* (No. 477, October Term, 1969). Accordingly, the term "proceedings" is a broad one.

> "It includes all steps taken or which may be taken in the state courts or by its officers from the institution to the close of the final process. . . . . It applies alike to action by the court and by its ministerial officers. . . ."
>
> *Hill* v. *Martin*, 296 U.S. 393, 403 (1935).

Thus pre-judgment garnishment has been recognized as a proceeding within the meaning of § 2283. *N. L. R. B.* v. *Underwood Mach. Co.*, 198 F. 2d 93 (1st Cir. 1952). So has a pre-judgment labor and material lien. *Javelin Oil Company* v. *T. C. Morrow Drilling Company*, 266 F. Supp. 119 (E. D. La. 1967). In Connecticut by virtue of proper garnishment the court acquires control and dominion over the property involved, which thus comes within its jurisdiction. *Gimbel* v. *Gimbel*, 147 Conn. 561, 565, 163 A. 2d 451 (1960).

OTHER REASONS WHY THIS CASE DESERVES NO FURTHER ARGUMENT.

The offers of proof are totally obscure as to indigency, a point on which important constitutional questions may turn. In addition, the case is for all intents and purposes a moot one, because the garnishment has been released. Appendix, p. A-4, n.1. If there is to be any further garnishment here a court order will be required. Conn. Gen. Stat. (Rev. to 1968), § 52-281. Furthermore, it is quite possible that the state suit will be disposed of well before this case can be decided by this Court. As to future cases, the decision of the three-judge court still leaves an adequate forum to raise the questions involved. That forum is the courts of Connecticut. As courts of competent jurisdiction they are presumed to be capable of providing a full and fair hearing. Constitution of the United States, Article X.

There is no point in inflating the federal dockets with suits like these. In 1968, 179 three-judge courts were convened. Last year the number was 291. *New York Times*, January 20, 1971, page 13, col. 6. Petition for certiorari to the State Supreme Court was the procedure followed in *Sniadach*. It should be followed here.

Respectfully submitted,
APPELLEE,
CHARLES H. BARRETT,
Deputy Sheriff

By: ROBERT K. KILLIAN
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CERTIFICATE OF SERVICE

I, Raymond J. Cannon, attorney for the appellee, Charles H. Barrett, Deputy Sheriff, certify that on the 2d day of February, 1971 I served a copy of the foregoing Brief on the appellants by mailing via U.S. Mail, postage prepaid, to the following attorneys of record:

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